

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

GMS INDUSTRIAL SUPPLY, INC.,)
Plaintiff,)
v.)
G&S SUPPLY, LLC, *et al.*,)
Defendants.)

)

Civil Action No. 2:19CV324 (RCY)

AMENDED RULE 16(b) SCHEDULING ORDER

This matter is before the Court on the parties' Joint Motion for Entry of Revised Rule 16(b) Scheduling Order (ECF No. 254) ("Motion to Revise"). For good cause shown, the parties' Motion to Revise (ECF No. 254) is hereby GRANTED.

The following shall govern the progress of this action in addition to the provisions of the Federal Rules of Civil Procedure as modified and/or enlarged upon by the Local Rules for this Court. This Order shall control if any conflict is perceived between it and either the Federal or Local Rules. This Order shall supersede all prior Scheduling and Pretrial Orders that have been entered in this matter. Subject to any motions now pending, the parties having reported to the Court in accordance with the Federal Rule of Civil Procedure (hereinafter "Rule") 26(f), the Court ORDERS as follows (only the court, by order, may approve extensions of time):

Trial Date

1. An **8-day Jury Trial** is scheduled to commence at 9:30 a.m. on **May 31, 2022** in Norfolk.

Non-Dispositive Motions

2. All non-dispositive motions, including all motions *in limine* (excluding *Daubert* motions, *see ¶ 3(e) supra*) shall be filed not later than **September 18, 2021**. The brief in opposition to such non-dispositive motions shall be filed not later than **May 6, 2022**. The reply brief in support of such non-dispositive motions, if any, shall be filed not later than **May 11, 2022**. The parties are referred to the requirements of Local Rule 7(E), which are incorporated herein by reference.

Proposed Witnesses

3. Each plaintiff shall file a list of proposed witnesses by September 8, 2021, and each defendant shall designate its witnesses by September 17, 2021. Plaintiff(s) shall file a list of any rebuttal witnesses by May 6, 2022. Failure to comply with the provisions of this paragraph shall result in preclusion of a witness's testimony at trial, absent exceptional circumstances.

Discovery To Be Used As Evidence

4. Each plaintiff shall file a designation no later than September 8, 2021 specifically identifying any discovery material that is intended to be offered into evidence and each defendant shall do likewise by September 17, 2021. Any designation must identify the specific item of discovery intended to be offered into evidence by exhibit number, title of the document and the specific page and sentence of the relevant information, along with a statement of relevance and basis for admission. Any objection to the introduction of any discovery material shall be filed on or before May 6, 2022 or the objection will be deemed waived. This paragraph does not apply to discovery materials that will be used at trial solely for cross-examination and/or for impeachment purposes.

Jury Trial

5. If this matter is to be tried by a jury, counsel for all parties shall jointly file electronically any requested jury instructions, including all requested standard instructions by May 9, 2022. The submission of proposed jury instructions shall include each requested jury instruction (regardless whether agreed or objected to) fully set forth on a separate page with a citation in support of the instruction set forth at the bottom of the requested instruction. The submission shall be organized as follows. First, the parties shall tender the agreed set of instructions (to be labeled "J-1," "J-2," etc.), including any special interrogatory verdict form. Second, the parties shall tender any of Plaintiff's proposed instructions (to be labeled "P-1," "P-2," etc.) to which Defendant objects. Third, the parties shall tender any of Defendant's proposed instructions (to be labeled "D-1," "D-2," etc.) to which Plaintiff objects. Counsel shall also provide a copy of the requested jury instructions in WORD format via e-mail to Chambers.

6. Not less than three (3) calendar days after the filing of the requested jury instructions, the objecting party shall submit its memorandum in opposition to any jury instructions requested by the other side that are not agreed upon. The objecting party shall set forth the nature of the dispute, any authority on the issue and any alternative instruction. Not less than five (5)

calendar days after the filing of the requested jury instructions, the party proposing any requested instructions that are not agreed upon may submit a memorandum in support of the requested instructions.

Voir Dire

7. Any proposed jury *voir dire* to be requested by any party shall be filed by May 9, 2022. Parties are encouraged to submit an instruction that succinctly summarizes the position of each party for use by the Court during *voir dire*.

Written Stipulations

8. Not later than May 6, 2022, counsel for each party shall meet and confer in a good faith effort to enter into written stipulations of uncontested facts. Written stipulations shall be signed by each counsel and filed with the Clerk not later than May 9, 2022.

Proposed Exhibits

9. Each plaintiff shall file a list of proposed exhibits by September 8, 2021 and shall provide a copy of all proposed exhibits to all parties. Each defendant shall file a list of proposed exhibits and shall provide a copy of same to every party by September 17, 2021. Any objection to any exhibit shall be noted by a motion that includes the subject exhibit(s) filed not later than May 6, 2022.

10. All exhibits will be presented by available electronic means at trial, with counsel to contact the courtroom deputy clerk before trial if counsel is not sufficiently familiar with the courtroom electronic system to effectuate presentation at trial. In anticipation of trial, each party shall ensure that three (3) sets of pre-marked, indexed copies of that party's exhibits are submitted in binders to the Clerk at least one day before trial begins for use by the courtroom deputy clerk during trial proceedings and the jury during its deliberations.

Final Pretrial Conference

11. A Final Pretrial Conference will be held on May 19, 2022 at 1:15 p.m. in Norfolk. Not later than May 12, 2022, the parties shall jointly submit a proposed Final Pretrial Order to the Court, endorsed by counsel and setting forth all resolved and disputed matters related to trial evidentiary issues. The proposed Final Pretrial Order shall be broken down by the following sections: (1) Stipulated Facts; (2) Legal and Evidentiary Stipulations (including jurisdiction and venue); (3) List of Proposed Witnesses by Each Party; (4) Exhibits (including identification of

those exhibits to which there is no objection); (5) Factual Contentions as set forth by each party; and (6) Triable Issues as set forth by each party.

Pretrial Briefs

12. The parties may file pretrial bench briefs on material issues expected to arise at trial; indeed, the Court encourages such practice. Pretrial briefs, however, may not serve as a substitute for motions *in limine*, because pretrial briefs do not seek a remedy. Instead, pretrial briefs serve as a vehicle for counsel to educate the Court about a potential trial issue. If counsel elects to file a pretrial brief, it must be filed not later than **May 26, 2022**.

Let the Clerk file this Order electronically and notify all counsel accordingly.

It is so ORDERED.



/s/ 
Roderick C. Young
United States District Judge

Richmond, Virginia
Date: April 12, 2022